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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/080,642

02/22/2002

Robert J. Fitzsimmons

24004350.10022US

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7590

12/27/2005

BAKER & MCKENZIE LLP  
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DALLAS, TX 75201

EXAMINER

LANDSMAN, ROBERT S

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/080,642		FITZSIMMONS, ROBERT J.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Robert Landsman		1647	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***1. Formal Matters***

- A. The Amendment mailed 11/2/05 has been entered into the record.
- B. Claims 2-6 and 18-23 are pending and are the subject of this Office Action.
- C. All Statutes under 35 USC not found in this Office Action can be found, cited in full, in a previous Office Action.

### ***2. Claim Rejections - 35 USC § 112, first paragraph – scope of enablement***

- A. The rejection of claims 2-6 and 18-23 under 35 USC 112, first paragraph, has been withdrawn in view of Applicants' arguments.

### ***3. Claim Rejections - 35 USC § 112, first paragraph – new matter***

- A. Claims 2-6 and 18-23 remain rejected under 35 USC 112, first paragraph, for the reasons already of record on page 3 of the Office Action mailed 8/11/05. Applicants argue that the specification does teach frequencies in the range of 3800 – 3900 Hz. However, while Applicants have taught two frequencies in that range, there is no support for the breadth of the range. The specification does not disclose the specific range of 3800-3900 Hz. It is suggested that Applicants amend the claims to recite the frequencies disclosed in the specification.

### ***4. Claim Rejections - 35 USC § 112, second paragraph***

- A. The rejection of claims 6 and 22 under 35 USC 112, second paragraph, has been withdrawn in view of Applicants' arguments. The term "substantially similar," especially in light of its use in the phrase in regard to cell growth, is clear. One in the art would be able to determine cell growth and how similar it was to growth in the presence of a ligand.

### ***5. Claim Rejections - 35 USC § 103***

- A. The rejection of claims 18-22 under 35 USC 103 has been withdrawn in view of Applicants' arguments that, even though Yen-Patton teach a frequency range of 15-4000 Hz, they do not specifically teach, nor would it have been obvious at the time of the present invention to have used the exact Hz as presently claimed for the purpose of cell growth.

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**6. Conclusion**

A. No claim is allowable.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Advisory information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Landsman whose telephone number is (571) 272-0888. The examiner can normally be reached on T-F 10 AM – 7 PM (eastern).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert Landsman  
Primary Examiner  
Art Unit 1647